

HOUSE SUBSTITUTE
FOR
HOUSE COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1267

AN ACT

2 To amend chapter 196, RSMo, by adding thereto
3 seven new sections relating to certification
4 of tobacco products, with penalty provisions.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
6 AS FOLLOWS:

7 Section A. Chapter 196, RSMo, is amended by adding thereto
8 seven new sections, to be known as sections 196.1010, 196.1013,
9 196.1016, 196.1019, 196.1022, 196.1025, and 196.1028, to read as
10 follows:

11 196.1010. As used in sections 196.1010 to 196.1028, the
12 following terms mean:

13 (1) "Brand family", all styles of cigarettes sold under the
14 same trademark and differentiated from one another by means of
15 additional modifiers or descriptors including but not limited to
16 "menthol", "lights", "kings", and "100s", and includes any brand
17 name alone or in conjunction with any other word trademark, logo,
18 symbol, motto, selling message, recognizable pattern of colors,
19 or any other indicia of product identification identical or
20 similar to, or identifiable with, a previously known brand of

1 cigarettes;

2 (2) "Cigarette", the same meaning as such term is defined
3 in section 196.1000;

4 (3) "Director", the director of the Missouri department of
5 revenue;

6 (4) "Master settlement agreement", the same meaning as such
7 term is defined in section 196.1000;

8 (5) "Nonparticipating manufacturer", any tobacco product
9 manufacturer that is not a participating manufacturer;

10 (6) "Participating manufacturer", the same meaning as such
11 term is defined in section 196.1000;

12 (7) "Qualified escrow fund", the same meaning as such term
13 is defined in section 196.1000;

14 (8) "Stamping agent", a person that is authorized to affix
15 tax stamps to packages or other containers or cigarettes under
16 chapter 149, RSMo, or any person that is required to pay the tax
17 imposed under section 149.160, RSMo, on other tobacco products;

18 (9) "Tobacco product manufacturer", the same meaning as
19 such term is defined in section 196.1000;

20 (10) "Units sold", the same meaning as such term is defined
21 in section 196.1000.

22 196.1013. 1. Every tobacco product manufacturer whose
23 cigarettes are sold in this state whether directly or through a
24 distributor retailer or similar intermediary or intermediaries

1 shall execute and deliver on a form or in the manner prescribed
2 by the director a certification to the director and the director
3 no later than the thirtieth day of April each year certifying
4 that as of the date of such certification such tobacco product
5 manufacturer is either a participating manufacturer or in full
6 compliance with subdivision (b) of section 196.1003, including
7 all installment payments required by section 196.1019.

8 (1) A tobacco product manufacturer shall include in its
9 certification:

10 (a) A list of all of its brand families and the number of
11 units sold for each brand family that were sold in the state
12 during the preceding calendar year;

13 (b) A list of all of its brand families that have been sold
14 in the state at any time during the current calendar year;

15 (c) Indicating by an asterisk, any brand family sold in the
16 state during the preceding calendar year that is no longer being
17 sold in the state as of the date of such certification; and

18 (d) Identifying by name and address any other manufacturer
19 of such brand families in the preceding or current calendar year.

20 The tobacco product manufacturer shall update such list thirty
21 days prior to any addition to or modification of its brand
22 families by executing and delivering a supplemental certification
23 to the director.

1 (e) That the tobacco product manufacturer is registered to
2 do business in the state or has appointed an agent for service of
3 process and provided notice of the appointment as required in
4 section 196.1016;

5 (f) That the tobacco product manufacturer, if required by
6 section 196.1003, has established and continues to maintain a
7 qualified escrow fund, as defined in section 196.1000, and
8 executed a qualified escrow agreement under the provisions of
9 section 196.1003;

10 (g) That such tobacco product manufacturer is in full
11 compliance with this section and section 196.1003, and any
12 regulations promulgated under either section;

13 (h) a. The name, address, and telephone number of the
14 financial institution where the tobacco product manufacturer has
15 established such qualified escrow fund required by section
16 196.1003 and all regulations promulgated under that section; and

17 b. The account number of the qualified escrow fund and any
18 subaccount number for the state; and

19 c. The amount the tobacco product manufacturer placed in
20 the fund for cigarettes sold in the state during the preceding
21 calendar year, the date, and amount of each such deposit, and
22 such evidence or verification as may be deemed necessary by the
23 director to confirm compliance with the requirements of this
24 subparagraph; and

1 d. The amount and date of any withdrawal or transfer of
2 funds the tobacco product manufacturer made at any time from the
3 fund or from any other qualified escrow fund into which it ever
4 made escrow payments under section 196.1003 and all regulations
5 promulgated thereto;

6 (2) A tobacco product manufacturer may not include a brand
7 family in its certification unless:

8 (a) The tobacco product manufacturer affirms that the brand
9 family is to be deemed to be its cigarettes for purposes of
10 calculating its payments under the master settlement agreement,
11 as defined in section 196.1000, for the relevant year, in the
12 volume and shares determined pursuant to the master settlement
13 agreement; or

14 (b) The tobacco product manufacturer affirms that the brand
15 family is to be deemed to be its cigarettes for purposes of
16 section 196.1003. Nothing in this section shall be construed as
17 limiting or otherwise affecting the state's right to maintain
18 that a brand family constitutes cigarettes of a different tobacco
19 product manufacturer for purposes of calculating payments under
20 the master settlement agreement or for purposes of section
21 196.1003;

22 (3) The tobacco product manufacturer shall maintain all
23 invoices and documentation of sales and other such information
24 relied upon for such certification for a period of five years,

1 unless otherwise required by law to maintain them for a greater
2 period of time.

3 2. By January 1, 2005, the director shall develop and make
4 available for public inspection or publish on its web site a
5 directory listing of all tobacco product manufacturers that have
6 provided current and accurate certifications conforming to the
7 requirements of subsection 1 of this section and all brand
8 families that are listed in such certifications, except:

9 (1) The director shall not include or retain in such
10 directory the name or brand families of any tobacco product
11 manufacturer that fails to provide the required certification or
12 whose certification the director determines is not in compliance
13 with subdivision (2) of subsection 1 of this section, unless the
14 director has determined that such violation has been cured to the
15 satisfaction of the director;

16 (2) The director shall update the directory as necessary in
17 order to correct mistakes and to add or remove a tobacco product
18 manufacturer or brand family to keep the directory in conformity
19 with the requirements of sections 196.1010 to 196.1028. The
20 director shall, by e-mail or other practical means to each
21 stamping agent and to each retailer who supplies an e-mail
22 address for that purpose, transmit notice of any addition to or
23 removal from the directory of any tobacco product manufacturer or
24 brand family. Unless otherwise provided by agreement between a

1 stamping agent and a tobacco product manufacturer, the stamping
2 agent shall be entitled to a refund from a tobacco product
3 manufacturer for any money paid by the stamping agent to the
4 tobacco product manufacturer for any cigarettes of the tobacco
5 product manufacturer in the possession of the stamping agent on
6 the date of notice by the director of the removal from the
7 directory of that tobacco product manufacturer or the brand
8 family of the cigarettes. Unless otherwise provided by agreement
9 between a retail dealer and a stamping agent or a tobacco product
10 manufacturer, a retail dealer shall be entitled to a refund from
11 a stamping agent or a tobacco product manufacturer for any money
12 paid by the retail dealer to such stamping agent or tobacco
13 product manufacturer for any cigarettes of the tobacco product
14 manufacturer still in the possession of the retail dealer on the
15 effective date of removal from the directory of that tobacco
16 product manufacturer or brand family of cigarettes. The director
17 shall not restore to the directory the tobacco product
18 manufacturer or the brand family until the tobacco product
19 manufacturer has paid each stamping agent or retail dealer any
20 refund due;

21 (3) Every stamping agent shall provide and update as
22 necessary an electronic mail address to the director for the
23 purpose of receiving any notifications that may be required by
24 sections 196.1010 to 196.1028;

1 (4) The director shall electronically transmit to each
2 stamping agent notice of any addition to or removal from the
3 directory of any tobacco product manufacturer or brand family;

4 (5) Not less than fifteen business days prior to the
5 removal from the directory of a tobacco product manufacturer or
6 brand family, the director shall provide written notice to the
7 manufacturer, at the address provided in the certification filed,
8 or any update thereto under section 196.1013, of the director's
9 proposed determination and the basis for the determination. A
10 tobacco product manufacturer or brand family may cure any
11 deficiency contained in the notice under the provisions of this
12 section within the fifteen-day period, or seek relief from the
13 director's determination by filing an action in a court of
14 competent jurisdiction of this state. The filing of the action
15 shall operate to stay the director's determination if the
16 manufacturer has paid into escrow the full amount of any
17 deficiency in the escrow payments that the director has
18 determined the manufacturer was required to have made under
19 section 196.1003, pending final resolution of the action.

20 3. It shall be unlawful for any person to affix a stamp to
21 a package or other container of cigarettes of a tobacco product
22 manufacturer or brand family not included in the directory, or to
23 sell, offer or possess for sale in this state cigarettes of a
24 tobacco product manufacturer or brand family not included in the

1 directory.

2 4. Notwithstanding subsection 3 of this section, for
3 twenty-one days following the date on which the director has
4 provided notice to a stamping agent of the removal of a brand
5 family or manufacturer, the stamping agent may continue to stamp
6 and sell cigarettes affected by the notice that the stamping
7 agent had purchased before the director provided notice of
8 removal, and such cigarettes shall not be subject to subsection 2
9 of section 196.1022.

10 5. A retailer may purchase cigarettes from a stamping agent
11 and sell such cigarettes at retail for forty-five days following
12 the date on which the director has provided notice to a stamping
13 agent of the removal of a brand family or manufacturer and such
14 cigarettes shall not be subject to subsection 2 of section
15 196.1022.

16 196.1016. 1. Any nonresident or foreign tobacco product
17 manufacturer that has not registered to do business in this state
18 as a foreign corporation or business entity shall as a condition
19 precedent to having its brand families listed or retained in the
20 directory appoint and continually engage without interruption the
21 services of an agent in this state to act as agent for the
22 service of process on whom all process, and any action or
23 proceeding against it concerning or arising out of the
24 enforcement of sections 196.1003 and 196.1010 to 196.1028 may be

1 served in any manner authorized by law. Such service shall
2 constitute legal and valid service of process on the tobacco
3 product manufacturer. The tobacco product manufacturer shall
4 provide the name, address, phone number, and proof of the
5 appointment and availability of such agent to the satisfaction of
6 the director.

7 2. The tobacco product manufacturer shall provide notice to
8 the director thirty calendar days prior to termination of the
9 authority of an agent and shall further provide proof to the
10 satisfaction of the director of the appointment of a new agent no
11 less than five calendar days prior to the termination of an
12 existing agent appointment. In the event an agent terminates an
13 agency appointment, the tobacco product manufacturer shall notify
14 the director of the termination within five calendar days and
15 shall include proof to the satisfaction of the director of the
16 appointment of a new agent.

17 196.1019. 1. Not later than twenty days after the end of
18 each calendar quarter and more frequently if so directed by the
19 director each stamping agent shall submit such information as the
20 director requires to facilitate compliance with this section,
21 including but not limited to a list by brand family of the total
22 number of cigarettes or in the case of roll your own the
23 equivalent stick count for which the stamping agent affixed
24 stamps during the previous calendar quarter or otherwise paid the

1 tax due for such cigarettes. The stamping agent shall maintain
2 and make available to the director all invoices and documentation
3 of sales of all tobacco product manufacturer cigarettes and any
4 other information relied upon in reporting to the director for a
5 period of five years.

6 2. The director may share information with other federal,
7 state or local agencies only for purposes of enforcement of
8 sections 196.1010 to 196.1028, or corresponding laws of other
9 states.

10 3. The director may require at any time from the tobacco
11 product manufacturer proof from the financial institution in
12 which such manufacturer has established a qualified escrow fund
13 for the purpose of compliance with section 196.1003 of the amount
14 of money in such fund exclusive of interest, and the amount and
15 date of each deposit to such fund, and the amount and date of
16 each withdrawal from such fund.

17 4. In addition to any other information required to be
18 submitted by law, the director may require a stamping agent or
19 tobacco product manufacturer to submit any additional information
20 including but not limited to samples of the packaging or labeling
21 of each brand family, as is necessary to enable the director to
22 determine whether a tobacco product manufacturer is in compliance
23 with sections 196.1010 to 196.1028.

24 196.1022. 1. In addition to or in lieu of any other civil

1 or criminal remedy provided by law, upon a determination that a
2 stamping agent or any person has violated subsection 3 of section
3 196.1013 or any regulation adopted pursuant thereto, the director
4 may revoke or suspend the license of any stamping agent in the
5 manner provided in chapter 149, RSMo. Each stamp affixed and
6 each sale or offer to sell cigarettes in violation of subsection
7 3 of section 196.1013 shall constitute a separate violation. The
8 director may also impose a civil penalty in an amount not to
9 exceed the greater of five hundred percent of the retail value of
10 the cigarettes or five thousand dollars upon a determination of a
11 violation of subsection 3 of section 196.1013 or any regulations
12 adopted pursuant thereto.

13 2. Any cigarettes that have been sold, offered for sale or
14 possessed for sale in this state in violation of subsection 3 of
15 section 196.1013 shall be deemed contraband and such cigarettes
16 shall be subject to seizure and forfeiture as provided by law,
17 and all such cigarettes so seized and forfeited shall be
18 destroyed and not resold.

19 3. The director may seek an injunction to restrain a
20 threatened or actual violation of subsection 3 of section
21 196.1013, or subsection 1 or 4 of section 196.1019 by a stamping
22 agent and to compel the stamping agent to comply with such
23 provisions. In any action brought under this section, the state
24 shall be entitled to recover the costs of investigation, costs of

1 the action, and reasonable attorney fees.

2 4. It shall be unlawful for a person to sell or distribute
3 cigarettes, or acquire, hold, own, possess, transport, import, or
4 cause to be imported cigarettes that the person knows or should
5 know are intended for distribution or sale in the state in
6 violation of subsection 3 of section 196.1013. A violation of
7 this section is a class A misdemeanor.

8 5. A person who violates subsection 3 of section 196.1013
9 engages in an unfair practice in violation of section 407.020,
10 RSMo.

11 196.1025. 1. A determination of the director not to list
12 or to remove from the directory a brand family or tobacco product
13 manufacturer shall be subject to review under section 196.1013.
14 Any brand family or tobacco product manufacturer that is removed
15 from the directory may seek relief from the director's
16 determination by filing an action in a court of competent
17 jurisdiction of this state. The filing of the action shall
18 operate to stay the director's determination if the manufacturer
19 has paid into escrow the full amount of any deficiency in the
20 escrow payments that the director has determined the manufacturer
21 was required to have made under section 196.1003, pending final
22 resolution of the action.

23 2. The first report of stamping agents required by
24 subsection 1 of section 196.1019 shall be due thirty days after

1 the effective date of sections 196.1010 to 196.1028; the
2 certifications by the tobacco product manufacturer described in
3 subsection 1 of section 196.1013 shall be due forty-five days
4 after such effective date; and the directory described in
5 subsection 2 of section 196.1013 shall be published or made
6 available within ninety days after such effective date.

7 3. The director may promulgate rules necessary to effect
8 the purpose of sections 196.1010 to 196.1028. Any rule or
9 portion of a rule, as that term is defined in section 536.010,
10 RSMo, that is created under the authority delegated in this
11 subsection shall become effective only if it complies with and is
12 subject to all of the provisions of chapter 536, RSMo, and, if
13 applicable, section 536.028, RSMo. This subsection and chapter
14 536, RSMo, are nonseverable and if any of the powers vested with
15 the general assembly under chapter 536, RSMo, to review, to delay
16 the effective date, or to disapprove and annul a rule are
17 subsequently held unconstitutional, then the grant of rulemaking
18 authority and any rule proposed or adopted after August 28, 2004,
19 shall be invalid and void.

20 4. In any action brought by the state to enforce sections
21 196.1010 to 196.1028, the state shall be entitled to recover the
22 costs of investigation, expert witness fees, costs of the action
23 and reasonable attorney fees.

24 5. If a court of competent jurisdiction determines that a

1 person has violated sections 196.1010 to 196.1028, the court
2 shall order any profits, gains, gross receipts, or other benefits
3 from the violation to be disgorged and paid to the state
4 treasurer for deposit in the general revenue fund and may be
5 appropriated to the attorney general and the department of
6 revenue for administration and enforcement of sections 196.1010
7 to 196.1028. Unless otherwise expressly provided the remedies or
8 penalties provided by sections 196.1010 to 196.1028 are
9 cumulative to each other and to the remedies or penalties
10 available under all other laws of this state.

11 196.1028. 1. Any tobacco product manufacturer required to
12 make payments under the provisions of section 196.1003, who has
13 not made shipments of tobacco products into this state prior to
14 the effective date of this act may be required to file an
15 instrument which may be a cash or surety bond, letter of credit,
16 or other instrument approved by the director which shall be in
17 the amount of the average escrow payment made by all escrow-
18 paying entities pursuant to section 196.1003, over the immediate
19 past twelve months but shall not exceed fifty thousand dollars.
20 The director shall, after a two-year period, release such
21 manufacturer from the bonding requirement.

22 2. In the event the bond filed with the director is cash,
23 the director shall deposit such bond in the state general revenue
24 fund and such bond shall be released to the manufacturer pursuant

1 to subsection 1 of this section from funds appropriated by the
2 general assembly for such purpose. If appropriated funds are
3 available, the commissioner of administration and the state
4 treasurer shall cause such refunds to be paid within thirty days
5 of the receipt of a warrant request from the director.